
SOUTH FLORIDA WATER MANAGEMENT DISTRICT



Audit of the Palm Beach Tree Farm Liquidation Contract Number C-7326

Audit #97-02

Prepared By
Office of Inspector General

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BACKGROUND

On September 20, 1996, the Director of Construction and Land Management Department, upon consultation and approval from the Executive Director, requested our Office perform a "full audit" of the Palm Beach Tree Farm Land Lease Contract (C-7326). The request was made after concerns were raised by senior managers about how the contractor's performance was being monitored.

The District closed on the purchase of a parcel of land known as the Palm Beach Tree Farm (the "Tree Farm") on October 4, 1995. The property is located on State Road 80, near the S5A Pump Station, and is property needed for the STA-1W Project. The Tree Farm size is approximately 47.5 acres and contained about 21,300 trees. The total purchase price was \$1,271,754 of which \$150,000 was for land and \$1,121,754 was for the trees. The tree purchase price represents a 20% discount to wholesale list prices.

The District desired to recover as much of the cost of the tree purchase price by selling the entire tree inventory. On September 11, 1995, the District solicited a Request For Bid (RFB) to sell the entire inventory for a lump sum price. Only one bid was received and the offer of \$152,500 was rejected because it was regarded as too low. The District canceled the first RFB and began soliciting for a revenue sharing type of agreement. The second RFB solicitation was issued on October 20, 1995, to which three bids were received. A contract with Florida State Construction, Inc. (the "Contractor") was eventually signed on July 3, 1996, eight months after the bids were opened (October 31, 1995). Work commenced in mid November of 1995. The contract term, per the contract, is December 1, 1995 through July 31, 1997.

The process for soliciting bids and preparing contracts is described in the District's *Procurement and Contracting Policy 7.10000*. The following applicable

policy statements (per §7.10010) govern the procurement of all commodities, equipment, and services by the District:

- The District shall follow generally accepted public procurement practices, and to the extent practicable and applicable, implement the legislative intent of Section 287.001, Florida Statutes. Procurement practices shall assure fairness and foster competition.
- The District shall conduct contract negotiations in a manner that ensures that the District receives fair value for its money, and that vendors and contractors receive fair compensation for their commodities, equipment, and services.
- District contracts shall be written in clear, concise, and comprehensive language with terms and conditions that are fair and equitable to the contracting parties.
- District employees shall refrain from making oral representations or entering into any oral agreements unless they have delegated procurement authority, as defined in Section 07.10015 and in Delegation of Authority No. 07.101 Delegation of Executive Director Procurement, Revenue and Zero Dollar Transaction, Execution and Other Authority. All oral agreements by employees with delegated authority shall subsequently be memorialized in writing.
- The District shall require documentation of all its transactions, and the performance of periodic audits/surveys conducted either by appropriate internal staff or by external firms.
- District employees in their official capacity shall neither solicit nor accept privileges, benefits,

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- gifts or exemptions for themselves or for others and shall adhere to the District's *Ethics Policy No. 03.801*.
 - Only staff of the Division of Procurement and Contract Administration are authorized to conduct formal competition solicitations and must be included in negotiations with potential contractors.

Additional contracting procedures are enumerated in Section 4 titled "Contracting Procedures" of the *Contract Administration Manual*.

District Personals' Responsibilities

The contract solicitation and monitoring process entail a considerable amount of collaboration between the Project Manager and the Contract Administrator. The following is a summary of each of these employees primary responsibilities related to RFB's:

Project Manager

- Prepares the scope of work for the bid solicitation package.
- Recommends preferences for where to advertise and assists in identifying a list of potential contractors.
- Provides technical assistance to Contract Administrator such as answering technical questions.
- Reviews draft contracts and provides feedback and suggestions to the Contract Administrator.
- Serves as the District's liaison with the contractor.
- Provides day-to-day monitoring of the operational aspects of the contract including site visits as necessary.
- Verifies that goods received or services rendered are in accordance with the terms of the contract.
- Verifies that payments/receipts are in accordance with contract terms including invoices/reports.
- Monitors technical compliance with contract provisions.

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- Documents all problems encountered and notifies appropriate parties.

Contract Administrator

- Functions as the central point for assembling solicitations and coordinating solicitation activity.
- Coordinates closely with the project manager in assisting in the preparation of the statement of work, especially for RFB's.
- Prepares the bid solicitation.
- Places advertisements, performs mailings to potential contractors, and distributes solicitation packages.
- Prepares the contract document.
- Collects and organizes contract data into a data base and maintains the data base.
- Monitors compliance with contract administrative matters.

OBJECTIVES, SCOPE AND METHODOLOGY

The objectives of this audit were:

- ◆ To examine the propriety of the procurement process to ensure that:
 - the contract was properly bid and solicited, resulting in sufficient competition,
 - applicable policies and procedures were followed in the preparation of the contract document,
 - the contract payment terms in the contract were the same as those submitted by the successful bidder, and
 - the contract was clear on the prohibition of sale of certain existing exotic trees, i.e., carrotwoods.
- ◆ To evaluate the adequacy of project management procedures to determine whether:
 - the monthly reports and invoices were reviewed for completeness and accuracy and revenues were remitted by the contractor in a timely manner and in accordance with the contract,
 - the trees are being sold for a reasonable price under the circumstances,
 - the tree farm has been maintained in accordance with the contract terms,
 - the Contractor has not been selling restricted trees, i.e., carrotwood trees.

The scope of the audit included the period from November 17, 1995, inception of work by the Contractor, through November 30, 1996, the period for which the most recent report has been remitted by the Contractor prior to our report date.

We accomplished the audit objectives by:

- ◆ examining various contract files maintained by the Contract Administrator, Project Manager and Office of Counsel,
- ◆ summarizing and analyzing tree sales,
- ◆ interviewing various staff involved in the contract solicitation, preparation, and monitoring processes,
- ◆ conducting field visits to the Tree Farm,
- ◆ obtaining expert assistance from the District's vegetation management personnel in the Operations and Maintenance Department, and
- ◆ performing other procedures deemed necessary.

We conducted our audit in accordance with generally accepted government auditing standards.

FINDINGS

Summary

We found that the contract bids were not properly tabulated and the contract document included terms that were substantially more favorable to the contractor than what was offered in the bid. We determined that terms of the contract were improperly “renegotiated” and changed by the Project Manager from what the contractor submitted in the bid, providing more favorable terms to the winning bidder contrary to District procurement policies and procedures. This impropriety was perpetuated by circumvention of internal controls established to prevent such occurrences. The Contract Administrator signed the bid tabulation form on his own behalf as the preparer and again on behalf of the reviewer/ approver, designated to be the Acting Director of Procurement & Contracts. Approval controls were further circumvented by the Contract Administrator signing the Contract Requisition Form on both his behalf and again on behalf of the Acting Director of Procurement & Contracts. Further, the contract was not fully executed until eight months after the bid opening. In the interim, the Contractor commenced work prior to contract execution without formal authorization.

The original bid provided for remittance of 67% of any sales to the District with a minimum guarantee of \$201,000. There were three significant changes to the terms of the contract from those offered in the bid, including: (1) allowing the contractor to purchase trees for his own use at a fixed price of \$32 per tree each (only 67% - \$21.44 was actually paid), (2) allowing a \$20 digging credit for trees sold to unrelated parties, and (3) remitting only 50% of the balance, after deducting the digging credit, for unrelated party sales. We estimate that the net effect of these changes along with the Project Manager’s misapplication of the contract payment terms resulted in \$112,000 in lost revenues through the first twelve months of the contract. We also

estimate additional lost revenues of \$75,000 over the remaining contract term for an estimated total revenue loss of \$187,000 over the life of the contract. The portion of the loss due to the misapplication of the payment terms of the contract, resulted in a recoverable underpayment of \$77,184 from the contractor to the District for the first twelve months of the contract.

Based on sales activity level for the first twelve months, we estimate that only about half the tree inventory will be sold. We also estimate that the District's net recovery of the cost of the salable tree inventory will likely be in the range of 20% to 23% before taking into consideration the potential recovery of underpayments by the contractor.

The contract was inadequately monitored by the Project Manager. Monthly contractor reports presented to the District in support of the contractor's calculation of the monthly net remittance contained numerous errors. Payments submitted by the Contractor did not comport to the payment terms contained in the contract resulting in significant underpayment to the District. In addition, over half of the sales invoices do not reflect tree sizes, which directly affects payments due the District, and has resulted in a loss of accountability because the District's ability to determine whether it has received fair compensation from the Contractor was diminished. This demonstrates the lack of review and control by the Project Manager.

Approximately 400 carrotwood trees are missing from the property which have not been accounted for. Carrotwood trees are classified as a Category I exotic/invasive pest plant. Therefore, the District determined it would be inconsistent with its mission to permit selling these trees. There is sufficient evidence to conclude that the Contractor removed carrotwood trees from the Tree Farm and would have no other motive for doing so other than for economic gain. However, we were unable to obtain

substantive evidence of such, absent an investigation or audit of the contractor's books and records. We estimated the market value of these trees to range from \$16,000 to \$20,000.

On July 11, 1996, the Governing Board approved a request for District staff to enter into an amendment to add another tree liquidation project, known as the Gerlach Farm, to the existing contract. The Project Manager allowed the Contractor to remove trees from this farm pursuant to the proposed contract amendment, but prior to the Governing Board's authorization to execute such contract amendment.

No monthly reports, invoices, or cash receipts, have been submitted by the contractor for trees sold or otherwise removed from the Gerlach Farm. The Contractor reported in summary fashion to have removed 372 trees through August 1996 prior to being ordered to cease work on the property in late October. We estimated the original cost of these trees to the District as having a value of approximately \$27,079. In January of 1997, the District's Department of Construction and Land Management initiated an updated inventory by an independent appraiser and concluded that an additional 511 trees valued at \$35,466 were missing.

The Project Manager exercised poor judgment in recommending a contract amendment, adding the Gerlach Farm to the original contract, considering the questionable performance of the current contractor and the fact that it should have been bid as a separate contract consistent with the District's procurement policy. Subsequently, the Gerlach Farm tree liquidation project was properly solicited and a contract was awarded in February 1997 to a different contractor.

**Questionable Bid
Selection Process**

A Legal Notice (advertisement) Request For Bid number C-7326 appeared in the Palm Beach Post on October 20, 1995. The advertisement stated that the District would receive sealed bids up to 2:30 P.M. on October 31, 1995. It also stated that a bid bond in the amount of \$1,000 was required. A prospective bidder responding to the advertisement would have only eleven days to familiarize themselves with the property and prepare a responsive bid. In addition to the advertisement, a mailing was made to a list of industry related vendors. As a result of these outreach activities, a total of 15 bid packages was mailed to vendors. Eleven vendors did not respond. Only three bids were received, and one "no-bid" response was received.

The Request For Bid (RFB) stated the deadline for bid submissions was 2:30 P.M. October 30, 1995, a day earlier than disclosed in the advertisement. This was an administrative oversight. However, the bids were opened on the latter of the two dates, October 31, 1995, and no bidders were excluded as a result. The three bids received were opened in the usual fashion in the bid conference room. The name of the bidder and bid price were read aloud, and a written bid tabulation was prepared. The bids received are reflected below:

BID SUMMARY				
<i>Bidder</i>	<i>Minimum Guaranteed Revenue</i>	<i>Percentage of Gross Sales to District</i>	<i>Minimum Monthly Remittance</i>	<i>Projected Net Revenue</i>
<i>Florida State Construction, Inc.</i>	\$201,000	67%	\$10,050	\$240,000
<i>Allstate Gardens, Inc.</i>	\$150,000	40%	\$10,000	\$369,982
<i>Moore's Plant Depot, Inc.</i>	\$150,000	50%	\$7,500	\$782,605

Moore's Plant Depot, Inc., was deemed not responsive because they did not submit the required bid bond and did not sign the bid, leaving only two responsive bidders.

The projected revenue on the bid forms did not appear to be considered in evaluating the bids. Part four of the Request For Bid states: "The Request For Bids will be evaluated based on the highest net revenue to the District." However, the bid selection criteria was based on the highest minimum guaranteed revenues. Thus, Florida State Construction, Inc. (the "Contractor") was selected as the successful bidder. The Contractor offered the District 67% of the tree sales with a minimum guarantee of \$201,000 at the rate of \$10,050 per month for 20 months but projected only \$240,000 in total net revenues to the District.

**Faulty And Improperly
Prepared Contract Bid
Tabulation**

The bid tabulation did not accurately reflect the bid submitted by the winning bidder, and the bid tabulation was not adequately reviewed or properly approved.

The bid tabulation posted on November 3, 1995, reflected substantially different payment terms than what was offered by the successful bidder. The bid tabulation sheet is an important contracting document. It is used to document the bids, compare the bids, and support that the award has been made based on the most favorable bid. It also provides documentation that the bids have been properly tabulated and have been reviewed. In this case, the bid tabulation reflects an offer from the winning bidder, Florida State Construction, Inc., of 67% of sales up to \$300,000 and 50% of sales over \$300,000. Such terms are substantially lower than what was specified in the bid which offered the District 67% of tree sales with a minimum guarantee of \$201,000.

We found that the bid tabulation was not properly reviewed and approved. The Contract

Administrator signed and dated the bid tabulation form on November 3, 1995, on both his own behalf as the preparer and again on behalf of the reviewer/approver, designated to be the Acting Director of Procurement & Contracts. Payroll time records indicate that the Acting Director was on sick leave that day.

The Acting Director, who currently serves the District as Ombudsman, indicated that at approximately the time of these events he had delegated signature authority in his absence to a different Contract Administrator. However, there was no clear documentation to verify the exact date that the alternate delegation of authority became effective. Therefore, we were unable to determine whether the bid tabulation should have been signed by the alternate signatory authority on this particular date. Nevertheless, in the absence of Acting Directors, we question the propriety of the Contract Administrator's action. Proper internal control would dictate that he should have obtained the signature of another Contract Administrator or waited for the Acting Director's return to review and approve the Bid Tabulation. Clearly, the Acting Director did not cede this responsibility to the Contract Administrator. The transcription of incorrect bid information to the bid tabulation sheet would have been detected if the bid tabulation was properly reviewed and approved.

**Contract Requisition
Form Approval Signature
Improper**

Procedures to ensure adequate internal controls were further circumvented in the signature approvals on the Contract Requisition Form (CRF). The CRF is initiated by the Project Manager and serves as the approval control document through each phase of the contracting process from the solicitation through contract execution. We found that it, too, was signed by the Contract Administrator on behalf of the Acting Director; first on December 20, 1995, when an initial draft was prepared, and second on February 27, 1996, after several revisions were made that were requested by the Contractor. On both of these dates, the CRF

was also signed by the Contract Administrator as both preparer on his own behalf and approver on behalf of the Acting Director. Payroll time records and the Acting Director's calendar reflect that the Acting Director was present on both of these days.

The bid tabulation and the CRF are the only forms that generally cross the desk of the Director of Procurement & Contracts and are important steps in the internal control structure. It is the responsibility of the Director to supervise the Contract Administrator's actions and document his supervision via his sign-off and approval on these critical documents.

Contract Execution Not Timely

We found that the contract was not fully executed until eight months after the bid opening. In the interim, the Contractor commenced work, prior to contract execution, without formal authorization.

Bids were opened on October 31, 1995, however, the contract was not presented to the Chair of the Governing Board for execution until July 3, 1996. Because of deadlines relating to the Everglades restoration project for which the farm was purchased, time was of the essence and the Contractor was permitted to commence with work in mid November 1995, prior to the execution of a contract document. However, no formal Notice-to-Proceed was issued by the District.

As stated earlier in the Criteria section of this report: "District employees shall refrain from making oral representations or entering into any oral agreements unless they have delegated procurement authority, as defined in Section 07.10015 and in Delegation of Authority No. 07.101 Delegation of Executive Director Procurement, Revenue and Zero Dollar Transaction, Execution and Other Authority. All oral agreements

by employees with delegated authority shall subsequently be memorialized in writing. [Underlines added] An authorization to commence work (tree removal) would, at a minimum, be required from the Deputy Executive Director.

Renegotiated Contract Terms Result in Lost Revenue

In concert with the above actions by the Contract Administrator, we have determined that the bid terms were “renegotiated” and changed by the Project Manager, between the bid opening and the bid posting, providing more favorable terms to the winning bidder. This is contrary to District procurement policies and procedures. No additional consideration from the Contractor inured to the District, which might explain (but would not legitimize) such an action on the part of the Project Manager.

The Contractor offered the District 67% of the tree sales with a minimum guarantee of \$201,000. However, the contract was written to allow the Contractor to purchase small to medium size trees for his own use at a fixed price of \$32 per tree. There is no evidence in the files, which would provide any rationale or support for this type of accommodation. The contract was further written in favor of the Contractor for trees sold to unrelated parties. The terms allow Florida State Construction, Inc. to first deduct a \$20 digging allowance for each tree, and remit 50% of the balance to the District. (No digging credit allowance is made for those trees purchased for the Contractor’s own use.)

The proper payment terms in the contract should have been consistent with the bid submission, i.e., that the District would receive 67% of the gross selling price of every tree, but not less than \$10,050 per month for 20 months, for minimum guaranteed revenues of \$201,000. The revised terms were not specified anywhere in the original bid. The bid was straightforward merely reflecting minimum tree sales, the percentage of sales to be paid to the District, and net minimum guaranteed revenues to the District. The bid was structured this way to

obligate the Contractor to produce a minimum level of revenue for the District, and also provide an incentive to maximize revenues for the District. The Project Manager justified his actions by stating that his payment term concessions did not matter because the award was based solely on the minimum guarantee. However, as stated earlier in the report, Part 4 of the Request For Bid states: "The Request For Bids will be evaluated based on the highest net revenue to the District." In our opinion, a bidder could have offered more favorable terms to the District even if the guaranteed minimum were lower.

Our review of sales for the first twelve months of activity reflect that the Contractor's gross sales tallied \$313,654, with \$64,800 of this amount representing 2,025 trees purchased by the Contractor for his own use, and the remaining \$248,854 representing 2,964 trees sold to unrelated parties.

Based upon the Project Manager and Contractor's apparent interpretation of the revised contract terms, the District received only \$138,354 (44.1%) of the \$313,654 in gross sales, and the Contractor received \$175,300 (55.9%) of gross sales. Thus, the payment terms in the contract have resulted in District net revenues substantially less than the bid terms of 67%. Neither the Project Manager, nor the Contract Administrator, could provide an adequate justification to support what appears to be their independently initiated business decisions.

We estimate \$112,000 in lost revenues through the first twelve months of the contract. We also estimate additional lost revenues of \$75,000 over the remaining contract term (i.e., the remaining eight months) for an estimated total revenue loss of \$187,000 over the life of the contract. These amounts include the combined effects of the digging credit, change in the percentage for unrelated party sales from 67% to 50%, and the "bargain" purchase effect of the Contractor being permitted to improperly purchase trees for his own use at a flat

rate.

We concluded that the changes to the contract payment terms were inappropriately “negotiated” and promoted by the Project Manager and were made by the Contract Administrator.

Misapplication of Contract Terms Result in \$77,184 Underpayment

Apart from the inappropriate modification to the terms of the agreement, the Project Manager in actual practice, allowed the contractor to submit remittances and calculate amounts due to the District in lower amounts than the actual contract specified. Clause five of the contract entitled Tree Payments states:

- A. As consideration for the rights conferred upon the CONTRACTOR by the DISTRICT pursuant to this CONTRACT, the CONTRACTOR shall pay to the DISTRICT a minimum amount of Ten Thousand Fifty Dollars and No Cents (\$10,050.00) each month for 20 months. If, in any given Contract month, the CONTRACTOR pays the DISTRICT an amount greater than \$10,050.00, the excess balance may be applied to supplement any future monthly payment. In no event, however, shall any monthly payment, including the supplement, fall below \$10,050.00. Payments shall begin on December 15, 1995. The monthly payment described herein constitutes payment for a minimum of Nine Thousand Five Hundred (9,500) small to mid-size trees at \$32.00 per tree which shall be purchased by the CONTRACTOR for his own use. The CONTRACTOR hereby guarantees a minimum total contract payment to the DISTRICT of Two Hundred One Thousand Dollars (\$201,000.00) over the Contract Term.
- B. In addition to the foregoing monthly payment of \$10,050.00, the CONTRACTOR shall pay the DISTRICT an amount equal to 50% of the selling price less a digging credit, which credit [would] be \$20.00 per tree, for the balance of the trees remaining on the Premises. The parties estimate Nine Thousand Two Hundred and One (9,201) trees remaining on the Premises. Such payment shall be made within

30 days of the sale of such trees or upon the termination of the CONTRACT whichever is earlier. The CONTRACTOR shall receive no deduction or digging credit whatsoever for digging any of the 9,500 or more trees purchased for his own use, which trees are described in subsection 5.A. above. The digging credit described herein shall be applied only for the removal of trees sold to others.

Clearly provision A. of the contract payment terms provided that the contractor would pay the District a minimum of \$10,050 per month for small to medium sized trees purchased for his own use based on a price of \$32 per tree. However, instead of remitting a minimum of \$10,050 per month for trees purchased for his own use, the Project Manager accepted payments based upon an overall monthly minimum of \$10,050 for all purchases/sales. In addition, for trees purchased for contractor's own account, the Project Manager permitted the contractor to pay the District only 67% of the agreed upon \$32 per tree or \$21.44. Based upon the actual terms in the contract, the contractor underpaid the District by \$77,184 for the twelve-month period covered by our audit. We calculated the amount as follows:

	<i>Amount</i>
<i>Minimum Monthly Guarantee (12 month audit period x \$10,050)</i>	\$120,600
<i>Payments Per Contractor (2,025 trees x \$21.44)</i>	43,416
<i>Underpayment</i>	77,184

Minimal District Cost Recovery

Based upon the actual amounts remitted, the project has not resulted in successful recovery of the cost invested in purchasing the property, which included a substantial salable tree inventory. About half of the trees will remain unsold and will have to be ultimately destroyed or otherwise disposed of.

We estimate that the District's cost of the trees sold by Florida State Construction, Inc. through the first twelve months is estimated at \$334,000 of which \$112,000 represents trees bought by the Contractor for his own use, and \$222,000 represents trees sold to unrelated parties. Our analysis indicates that the Contractor has been buying trees for his own use at about 58% of the District's cost and selling trees to unrelated parties at about 112% of cost. Since the District bought the trees at a 20% discount to wholesale list price, this indicates that the unrelated party sales are slightly more than the District paid but slightly less than wholesale list prices. Thus, we concluded that the selling prices of trees to unrelated parties appear to be reasonable compared to appraised value.

Net recovery of the District's investment is substantially less:

- ! 39% for trees the Contractor purchased for his own use, and
- ! 43% of unrelated party sale, and a composite recovery rate of about 41%.

However, for sales to unrelated parties, after taking into consideration the effect of the inappropriately allowed digging credit and lower percentage split (i.e., 50% vs. 67%) for unrelated party sales, the District's net realization is not much different from those bought by the Contractor for his own use.

About 5,000 trees have been sold during the first twelve months, about 27% of the 18,700 salable tree inventory. This represents about 34% of the inventory dollar value because sales have been skewed toward higher priced trees. By extrapolation, we estimate that, providing that there is no disruption in performance, only about half the inventory will be sold, based on dollar value. The District, based upon the payment terms established by the Project Manager, can only expect to receive the minimum guarantee of \$201,000 or perhaps

slightly more. This would result in net recovery of only 20%, or at best, 23% of the total price paid by the District for the salable tree inventory.

Inadequate Contractor Monitoring

This contract required careful monitoring of Contractor activities by the Project Manager. We noted several deficiencies in contract monitoring as follows:

1. The Project Manager failed to assure adequate accountability on the part of the Contractor. A substantial number of invoices submitted by Florida State Construction, Inc. do not reflect tree sizes, which directly affects payments due the District, and has resulted in a loss of accountability by reducing the District's ability to determine whether it has received fair compensation from the Contractor. (For trees without sizes on the invoices, an average price for the species was used in calculating the estimates in this report.)

Out of the 4,989 trees sold, 2,352 (47.1%) did not reflect the tree size on the invoice. In conjunction with the property purchase, a complete tree inventory and appraisal was performed by an external certified appraiser. The appraisal included a detail inventory by species and size. Trees are generally valued by price per foot, thus, the size has a significant effect on the value of trees sold. In addition, as stated earlier, the contract was inappropriately modified to allow the Contractor to purchase small to medium sized trees for his own account at a cost of \$21.44. The absence of tree sizes on the invoices suggests that the Project Manager was not monitoring the satisfactory implementation of this term in the contract.

2. There is no evidence that the Project Manager reviewed any of the sales invoices

presented to the District in support of the contractor's calculation of the monthly net remittance. The following errors we identified in auditing the monthly sales reports exemplify like this:

- The monthly sales report listed Invoice 1103 with sales of \$715, but the invoice showed \$815, resulting in an error in the Contractor's favor.
- The monthly sales report listed Invoice 1134 with sales of \$611, but the invoice showed \$576 resulting in an error in favor of the District. The error resulted from posting the total to the monthly sales report which included the sales tax instead of the subtotal before sales tax.
- The monthly sales report listed Invoice 1201 with sales of \$42.50, but the invoice showed sales of \$170 resulting in an error in favor of the Contractor.
- A delivery charge on \$150 on Invoice 1320 was erroneously included in the monthly sales report resulting in an error in the District's favor.
- The monthly sales report reflected an \$18 transposition error in favor of the District relating to Invoice 1269.

The aggregate net effect of all errors was \$95.77 in the District's favor. Although the net effect of these errors is not material, it demonstrates the lack of review and control by the Project Manager.

3. Several hundred carrotwood trees are missing from the property which have not been accounted for. (See further discussion regarding the carrotwood trees in the section below.)

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4. The Project Manager authorized the Contractor to remove trees from another farm pursuant to a proposed contract amendment, but prior to authorization by the Governing Board and execution of a contract amendment. (See further discussion in the section on page 15 regarding the "Gerlach" Farm.)
 5. The contract provisions specifying the maintenance standards for the farms were not enforced. Following are specific contract requirements not enforced:
 - "Category I exotic/invasive pest plants must be controlled" - There were numerous carrotwood seedlings sprouting around the base of the carrotwood trees with no evidence that they were being controlled.
 - "Properly maintain property and tree stock (pruning, dicing, spraying, fertilizing, etc.)" - Weeds and undergrowth was excessive with no indication of effort to control them.
 6. The Project Manager permitted the misapplication of the payment terms discussed earlier in the report.

Prohibited Exotic Species Are Missing From The Tree Farm Inventory

More than 400 carrotwood trees have been removed or otherwise cannot be accounted for at the Tree Farm. The Tree Farm's original inventory included about 2,600 carrotwood trees. Carrotwood trees are listed in the *1995 List of Florida's Most Invasive Species* published by the Exotic Pest Plant Council as a Category I Exotic Pest Plant. Thus, the District determined that it would be inconsistent with its mission to allow the carrotwood trees to be sold, and they were not intended to be a part of the tree liquidation inventory.

On August 16, 1996, an Operations and

Maintenance Department staff member visited the Tree Farm and noted several carrotwood trees that had been harvested with the roots wrapped in burlap material. This is the typical process for preparing trees for shipment. See the photograph (Figure 1) in Exhibit 1.

In response to the above observation, on September 4 & 16, 1996, staff from the District's Vegetation Management Division counted and paint banded carrotwood trees located at the Tree Farm. Each tree was counted and banded with a florescent spray paint to significantly diminish the marketability of the trees. In addition, a carrotwood tree count was estimated for a debris pile located on the Tree Farm. A total of 2,146 carrotwood trees were counted. Between 30 and 50 carrotwood trees were estimated to be in the debris pile. The original tree inventory for the Tree Farm placed the carrotwood tree inventory at 2,612 trees. The resulting discrepancy is between 416 and 436 trees.

While conducting the carrotwood tree inventory, staff also observed several carrotwood trees tagged with flagging material indicating that prospective buyers were interested in the purchase of these trees. In addition, fresh tree spade pits were observed in areas of the farm which were predominately planted with carrotwood trees. Also, remaining root fragments in these fresh tree spade pits were identified as carrotwood tree roots.

The contract does not have a special provision specifically forbidding the sale of carrotwood trees. However, it is evident that the District's intentions were well communicated to all of the prospective bidders, including Florida State Construction, Inc., based on the following:

- The RFB stated that all Category I exotic/invasive pest plants must be controlled, and a list of these plants was provided which included carrotwood trees. This alone should have made it clear that the

sale and propagation of carrotwood trees were contrary to the District's mission and thus, were not to be sold.

- A tree inventory was included as an exhibit to the RFB. The carrotwoods that were listed on the inventory were prominently stricken out with dark lines drawn through those inventory items to indicate that these were not part of the tree liquidation project. All pages of this exhibit were initialed by the Contractor on the bid he submitted.
- The Project Manager claimed that the bidders were specifically informed that there was to be no removal of carrotwood trees.

There is sufficient evidence to conclude that the Contractor removed carrotwood trees from the Tree Farm and would have no other motive for doing so other than for economic gain. Nevertheless, no funds have been received by the District for carrotwood tree sales, and no such sales are listed on any invoices submitted. Notwithstanding the prohibition, any revenues should have been remitted to the District from such sales. We estimate that selling approximately 400 carrotwood trees would yield revenues of between \$40 and \$50 per tree for a total ranging from \$16,000 to \$20,000.

**Out of Scope Work Activity
Permitted at Another Tree
Farm**

Several hundred trees costing approximately \$27,079 were removed from another tree farm owned by the District without proper authority. To date, we have not been reimbursed for these trees despite repeated requests for a full accounting from the contractor. In addition, District's Department of Construction and Land Management (CLM) identified several hundred unaccounted for trees with an estimated value of \$35,466.

In March 1996, the District acquired another tree farm, known as the Gerlach Farm. This farm contained approximately 4,400 trees of which approximately 75% are Queen Palms and Washington Palms. On July 11, 1996, the Governing Board approved a request for District staff to enter into an amendment to add the Gerlach Farm to the existing contract. The Project Manager permitted the Contractor to commence removing trees from this property in June 1996, without any written authorization to do so, and prior to Governing Board approval to negotiate the terms of an amendment.

No monthly reports, invoices, or cash receipts, have been submitted to the District for trees sold off the Gerlach Farm. When the Director of Construction & Land Management became aware of this, the Contractor was instructed on October 25, 1996, to cease all operations on the Gerlach property by the Project Manager. Evidence indicates that the Contractor ignored the District's demand in its October 25, 1996, letter.

On November 14, 1996, the Director of Procurement and Contracts Division requested Florida State Construction, Inc. to provide copies of all invoices for orders filled to-date. The Contractor did not comply with the request. However, the Contractor did respond in writing with an exhibit showing the following detail of trees sold through August 31, 1996:

Species	Number
<i>Queen Palms</i>	213
<i>Washington Palms</i>	129
<i>Crepe Myrtles</i>	30
Total	372

One hundred sixteen (116) of these trees were sold during June 1996 prior to Governing Board Approval.

We calculated the estimated cost of these trees based upon the original average appraised value of each specie and concluded that the 372 trees were worth approximately \$27,079. The Contractor has not provided details of trees he continued to remove for the 2 1/2 months between September 1, 1996 thru mid November when his operations at the Gerlach Farm were halted.

In January of 1997, CLM initiated an updated inventory by an independent appraiser and concluded that an additional 425 Queen Palms and 86 Washington Palms were unaccounted for. CLM's Review Appraiser estimated the value of these missing trees at \$35,466.

The additional inventory on the Gerlach Farm should have been separately and competitively bid, because it was not within the scope of the original solicitation. It should not have been brought to the Governing Board as an addendum to the existing tree farm contract. There was no evidence that the procedures for a waiver of competition were followed regarding the proposed Gerlach Farm amendment, prior to allowing the Contractor to work the farm, and as importantly, before taking the proposal for an amendment to the Board for their approval. The District's *Procurement and Contracting Policy*, Section 7.1003 "Exceptions to

Competition Standards,” requires the Department or Office to justify the exception, which addresses the following:

- The circumstances which result in the need for the exception to the standards for competition.
- How the District’s goal of public confidence, competitive price, and fairness will be preserved by the method of selection used.

The policy also states that written preapproval of the documentation supporting the exception to competition be obtained from the Executive Director, or delegatee, prior to any negotiations. No such documentation exists in either the Project Manager’s or the Contract Administrator’s files. In addition, the Waiver of Competition box on the Contract or Agreement Award Request Form (CAARF) was not checked, nor was there any mention of such in the discussion under the Solicitation/Competition narrative section.

On November 15, the Inspector General’s Office made a site visit to the Gerlach Farm and noted the following:

- There was a fresh tree space pit in the section of the farm planted with carrotwood trees. The remaining root fragments were identified as the carrotwood species by a District botany expert.
- There was another carrotwood tree that had been root pruned, which is a process performed to prepare these type of trees for harvesting.
- There was flagging material with a customer’s name printed on it that was tied around a carrotwood tree, indicating their intentions to purchase the tree.

Based on the above observations, we have concluded that the Contractor may be actively

selling carrotwood trees.

In light of the Contractor's relatively sluggish sales of trees at the Tree Farm already under contract, we further question the Project Manager's rationale for making available additional inventory of salable trees to the Contractor.

The Contractor was ordered to cease work at the Gerlach Farm since no contract had been executed. The project was solicited under an RFB, and a contract was executed on February 13, 1997, with a different contractor.

Six Month Termination Clause

An unusually favorable termination clause was extended to the Contractor. The contract termination clause states, "Either party may terminate this contract at any time upon one hundred eighty (180) days prior written notice to the other party." This is the same as the termination clause for convenience which was included in the sample contract included with the bid package. Although contract termination periods are not specifically addressed in the District's procurement policy, this is a significant departure from the standard termination clause which generally only provides for "The District to terminate at any time for convenience upon thirty (30) days prior written notice to the other party," when such termination is in the District's best interest. Under exceptional circumstances the termination period is longer, however, there were no unique circumstances regarding the Tree Farm contract which warranted such an extensive termination period. The clause ostensibly tied the District's hands from taking action for contractor marginal performance.

CONCLUSION

Based on the preceding findings, there is considerable evidence that the Project Manager and Contract Manager both acted inappropriately, in awarding and monitoring this contract, resulting in substantial loss of revenue to the District. District Policy § 03.60333 Acts of Misconduct describe different acts of employee misconduct. Paragraph two of that subsection defines Failure to Perform as: "An employee's failure to perform, either wholly or partially, a lawful duty or to neglect an assigned duty, instruction, or responsibility during working hours." Paragraph 26 defines Negligence as: "The failure to use ordinary or reasonable care, caution, attention, diligence, or discretion in the performance of assigned duties and responsibilities." In our opinion, neither of these employees exercised due care in fulfilling their responsibilities. Heightened supervision might have resulted in earlier detection and remediation. Our audit did not find evidence of defalcation, but in light of the circumstances, we cannot rule it out.

A preliminary report containing our findings and recommendations was shared with management on November 25, 1996. We subsequently consulted with the Director of Investigation in the Chief Inspector General's Office under the Executive Office of the Governor. Based upon her recommendation and with her assistance, the Inspector General's Office referred this matter to the Florida Department of Law Enforcement (FDLE) for possible criminal investigation. In early December 1996, we met with a representative of the Florida Department of Law Enforcement to discuss our findings. Subsequently, in January 1997 FDLE's Regional Legal Advisor reviewed our preliminary report and concluded that based on the conduct described and without further information, FDLE's participation in a criminal investigation was not warranted. We also shared the preliminary report with the Statewide Prosecutor's Office but to date have not received the results of their review.

RECOMMENDATIONS

District Management should:

1. **Assign new individuals to monitor this contract and remove the Project Manager and the Contract Administrator from further contracting responsibilities.**

[This recommendation has been implemented. The Project Manager was reassigned to other duties at the time our preliminary findings and recommendations were conveyed. Similarly, the Contract Administrator was relieved of further responsibility as it relates to this project.]

2. **The District should consider the facts of this report, the work history of the employees, and the guidance provided in the District's Policy 03.603 *Corrective Action* in determining what action should be taken against the Project Manager and Contract Administrator.**

[Disciplinary action is underway.]

3. **The District should enforce upon the Contractor all provisions of the contract, specifically his responsibilities for dicing, spraying, and especially control of Category I exotic/invasive pest plants.**

[A new Project Manager has been assigned to this contract to more vigorously enforce the contract requirements.]

4. **Recover from the contractor \$77,184 in underpayments for the first twelve months of the contract term and obtain a full accounting of all salable trees made by the Contractor at the Gerlach Farm and request remittance in full for all sales.**

[Several unsuccessful attempts have been made to obtain an accounting and remittance

for the Gerlach Farm trees. The contractor has not been cooperative. Office of Counsel plans to send a payment demand letter to the Contractor.]

5. Obtain a contractor to liquidate the District's salable trees through a competitive process.

[Subsequent to the issuance of our preliminary report, the contractor was prevented from removing trees from the Gerlach Farm, and another contractor was selected through a competitive contract to remove the remaining trees.]

6. Request the Office of Inspector General to perform a financial audit of the Contractor's records at the conclusion of the contract.

[See Appendix I, memo from the Director of the Procurement to the Executive Director dated January 14, 1997, "Tree Farm Audit Report Response." It states that: "A final contract and financial audit will be requested upon completion of the Tree Farm contract."]

7. Establish guidelines and procedures to ensure that contractors are not authorized to commence work prior to the execution of a contract document, unless the Project Manager has documented a compelling reason to do so, and it has been reviewed and approved by senior management. A written Notice-to-Proceed should always be used to document a contractor's authorization to commence work.

[See Appendix I, memo from the Director of the Procurement to the Executive Director dated January 14, 1997, "Tree Farm Audit Report Response."]

8. Establish guidelines for contract termination clauses.

[See Appendix I, memo from the Director of the Procurement to the Executive Director dated January 14, 1997, "Tree Farm Audit Report Response."]